tion for a writ of certiorari was filed on January 9, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the National Labor Relations Board abused its discretion to determine appropriate collective bargaining units by concluding that the Company's Denver terminal constituted an appropriate unit.

2. Whether, in the circumstances of this case, the Board properly ordered the company to bargain with the union which had been certified as the representative of the employees in that unit.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at pp. A13-A16 of the Appendix to the petition.

STATEMENT

Groendyke Transport, Inc., operates a truck freight line for the transportation of petroleum products. Its home office is in Enid, Oklahoma, and it has 29 terminals located in Oklahoma, Texas, Kansas, New Mexico, and Colorado (A. 127-128; 23-25, 40-41).[1] The two terminals in Colorado are at Denver and La-

[1] "A." references are to the Appendix to the briefs filed in the court below.

Junta, approximately 180 miles apart; no other terminal is within 400 miles of Denver (A. 40-41). Seventeen drivers are stationed at Denver and 2 are stationed at LaJunta (A. 127-128, 96-97).[2] The basic issue in this case is whether the Denver terminal, alone, constitutes an appropriate bargaining unit, and the pertinent facts are as follows:

The Company's accounting, billing, payroll, and record-keeping are handled centrally by the home office at Enid (A. 24-27, 28). However, responsibility for the day-to-day operation of the Denver terminal rests with the terminal manager, Jesse Seals (A. 119-120). The Denver terminal manager has authority to assign drivers to various trucks and hauls, and can alter these assignments whenever necessary (A. 109). The manager reprimands drivers when complaints are received from customers and investigates accidents involving any of the Denver drivers (A. 113, 119-121). Although there is a special grievance committee at the home office, grievances and "gripes" are heard initially by the terminal manager (A. 34, 86, 113, 118, 124-125).[3] Matters such as shortages in pay are handled at the local level (A. 119, 124-125). The terminal manager also has authority to grant requests for time off (A. 113).

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[2] Except for the arranging of return hauls between Denver and LaJunta, the LaJunta drivers receive orders directly from customers and dispatch themselves without contacting the Denver terminal (A. 58, 107-109).

[3] The only type of grievance which the Denver terminal manager could recall having been handled by the committee involved monetary discipline against an employee (A. 118-119).

After an initial order is assigned to a particular terminal by the home office, any subsequent orders may be placed directly with the local terminal (A. 49-50, 57, 60-61).

Although the Company's home office is ultimately responsible for the hiring of drivers, Denver terminal personnel interview the applicants, choose the physicians or clinics to use for physical examinations, and ride with each applicant to test his driving ability (A. 27-28, 75-76, 79-80, 89-90, 106-107, 118). Although it usually takes two or three weeks for the home office to pass on an application, new drivers are normally put to work by the terminal manager within three or four days after their initial interview (A. 75-76, 79-80, 89-90, 106-107, 111, 118).

Only 2 of the 17 drivers at the Denver terminal have transferred there from other terminals (A. 100-102). In the 12 months prior to the Board hearing, only 2 drivers had transferred out of the Denver terminal and these transfers were pursuant to personal requests and were not the result of business fluctuations (A. 100-102).

The Company has no history of formal collective bargaining, either on a system-wide or single-terminal basis (A. 41-42). However, in March 1964, the Denver drivers requested a meeting with the Company's president, which resulted in an adjustment in wages applicable only to drivers stationed in Colorado (A. 151-153, 117, 122-123). No labor organization has sought to represent the Denver drivers on a basis broader than the single terminal (A. 128, 118).

Shortly after the March, 1964 meeting, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 961, filed a petition with the Board for a representation election among the Denver drivers. On the basis of the above facts, the Board's Regional Director found that the Denver terminal constituted an appropriate unit for collective bargaining and directed an election in that unit (A. 127-130). In an election on August 3, 1964, 14 votes were cast for the Union and 2 were cast against it. The Company's objections to the election were overruled by the Regional Director, who certified the Union as the employees' representative; the Board declined to review that action (A. 136-137, 140). Thereafter, the Company refused to bargain, the Union filed unfair labor practice charges, and the Board found that the Company had violated Section 8(a)(5) and (1) of the Act (A. 7; 16-17). The Board ordered the Company to cease and desist from the unfair labor practice found, and to bargain with the Union upon request (A. 11-14).

Upon the Board's petition for enforcement of its order, the court below concluded that the election had been properly conducted, but remanded the unit question to the Board to explain a possible discrepancy between its decision in this case and an earlier decision involving the same company (92 NLRB 1332) which found a three-terminal unit to be inappropriate. *National Labor Relations Board* v. *Groendyke Transport, Inc.*, 372 F. 2d 137 (C.A. 10), certiorari denied, 387 U.S. 932. The Board reviewed its earlier decision and pointed out that the factors which

militated against a three-terminal unit—wide geographic separation between them and the fact that the three terminals did not correspond to any functional or administrative division of the Company's operation—were absent in the case of this single-terminal unit. Accordingly, it reaffirmed the appropriateness of its unit determination in this case. (Pet. App. A1-A4.) On November 18, 1968, it again requested the court below to enforce its bargaining order.

The Company then filed a petition with the Regional Director, seeking an election to decertify the Union (Pet. App. A16-A18). The petition was dismissed by the Director because of the outstanding Board bargaining order, with which the Company had failed to comply (Pet. App. A5-A6), and the Company sought review.

The two actions were consolidated in the court of appeals. The court enforced the Board's order, and dismissed the Company's petition (Pet. App. A7-A11).

ARGUMENT

1. Section 9(b) of the Act empowers the Board to decide "in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by [the] Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof." In exercising this authority, the Board determined that the Company's terminal at Denver, Colorado, was an appropriate unit for collective bargaining. Whether that conclusion, which was sus-

tained by the court below, constitutes a reasonable exercise of the Board's discretion principally involves an assessment of particular facts, and thus does not warrant futher review.

In any event, the geographic separation of the Denver terminal from petitioner's other terminals, the substantial authority of the Denver terminal manager, the minimal interchange of drivers to and from other terminals, and the previous separate treatment of the Denver drivers (*supra*, pp. 2-4), all support the Board's determination that the Denver terminal constitutes an appropriate bargaining unit. Furthermore, the Board properly concluded that the absence of these factors in connection with the three-terminal unit found to be inappropriate in 1951 (*supra*, pp. 5-6) amply distinguished that case from the present one.[4]

2. The Board correctly rejected the Company's offer to show that the Union no longer represented a

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[4] The cases cited by the Company (Pet. 11-13) are also distinguishable. *National Labor Relations Board* v. *Davis Cafeteria, Inc.*, 396 F. 2d 18 (C.A. 5), *National Labor Relations Board* v. *Purity Food Stores, Inc.*, 376 F. 2d 497 (C.A. 1), certiorari denied, 389 U.S. 959, and *National Labor Relations Board* v. *Frisch's Big Boy Ill-Mar, Inc.*, 356 F. 2d 895 (C.A. 7), involved the propriety of single store units within a geographically cohesive chain, in which the courts found no real local autonomy and a frequent interchange of employees. In *Local 1325, Retail Clerks* v. *National Labor Relations Board*, 414 F. 2d 1194 (C.A.D.C.) (Pet. 7), the District of Columbia Circuit held that while a single store unit, among others, might have been justified, it could not accept the Board's conclusion that a state-wide unit was appropriate in that case, since it resulted in including "a 'distant' Rhode Island store and exclud[ing] a 'nearby' Massachusetts store" (414 F. 2d at 1205).

majority of the employees at the Denver terminal. A loss of majority does not preclude enforcement of the Board's bargaining order where the loss is fairly attributable to the Company's unlawful refusal to honor the Board's certification of the Union. *National Labor Relations Board* v. *Gissel Packing Co.*, 395 U.S. 575, 610; *Franks Bros.* v. *National Labor Relations Board*, 321 U.S. 702. Nor does enforcement of the Board's order run afoul of Section 10(b) of the Act. That provision (Pet. App. A15) merely bars issuance of a *complaint* based "upon any unfair labor practices occurring more than six months prior to the filing of the charge with the Board"; the charges here were filed on September 14, 1964, within one month of the Company's initial refusal to bargain with the Union (A5, 11). See *National Labor Relations Board* v. *Katz*, 369 U.S. 736, 748, n. 16.

3. Finally, the Company's attack on *Mar-Jac Poultry Co.*, 136 NLRB 785 (Pet. 18-20) is misplaced. There, the Board held that, where an employer deprives a certified bargaining representative of the benefits of a substantial portion of the certification year (see *Brooks* v. *National Labor Relations Board*, 348 U.S. 96) by delaying the start of good faith bargaining, he may be required to bargain with the union beyond expiration of that year in order to provide the union with a full twelve months in which to seek agreement on a contract.[5] Since the

[5] The *Mar-Jac* principle has received judicial approval. *National Labor Relations Board* v. *Commerce Co.*, 328 F. 2d 600, 601 (C.A. 5), certiorari denied, 379 U.S. 817; *National Labor Relations Board* v. *Burnett Construction Co.*, 350 F. 2d 57, 60 (C.A. 10).

Company has not as yet started to bargain in good faith with the Union, the Regional Director dismissed its petition to decertify the Union, not on the basis of *Mar-Jac*, but under the well settled principle that such a petition will not be processed in the face of unremedied unfair labor practices. See *Furr's, Inc.* v. *National Labor Relations Board*, 350 F. 2d 84, 85-86 (C.A. 10); *National Labor Relations Board* v. *Auto Ventshade, Inc.*, 276 F. 2d 303, 307-308 (C.A. 5).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1970.

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